

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1) ERIC MOODY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:19-cv-00091-CVE-FHM
	)	
1) TRINITY INDUSTRIES,	)	
	)	
2) TRINITY CONTAINERS,	)	
	)	
Defendants.	)	
	)	

**DEFENDANT TRINITY CONTAINERS, LLC.'S NOTICE OF REMOVAL**

Defendant Trinity Containers, LLC (“Containers”)<sup>1</sup> hereby notices the removal of this action pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 to the United States District Court for the Northern District of Oklahoma, and as grounds therefor states:

**I. TIMELINESS OF REMOVAL**

On or about August 6, 2018, Plaintiff Eric Moody (“Plaintiff”) filed a civil action against Defendant in the District Court in and for Tulsa County, State of Oklahoma, Case No. CJ-2018-03291. Pursuant to 28 U.S.C. § 1446(a) and LCvR81.2, copies of all documents filed or served in this case, along with a docket sheet of the matter are attached hereto as Exhibit “1”. Plaintiff “served” Containers with the Summons and Petition on January 29, 2019.<sup>2</sup> Accordingly,

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<sup>1</sup> Neither Trinity Industries nor Trinity Containers are the properly named parties to this litigation. Plaintiff was previously employed by Trinity Containers, LLC, which is now Arcosa Tank, LLC f/k/a Trinity Containers, LLC. Arcosa, Inc. is now the parent company of Arcosa Tank, LLC f/k/a Trinity Containers, LLC, not Trinity Industries.

<sup>2</sup> Plaintiff mailed the Summons and Petition to “Trinity Containers” at its facility in Tulsa, Oklahoma. Plaintiff did not restrict delivery to an authorized agent and no authorized agent signed for the envelope. Likewise, Plaintiff mailed the Summons and Petition to “Trinity Industries” at its headquarters in Dallas, Texas. Plaintiff did not restrict delivery to an authorized agent and no authorized agent signed for the envelope. Thus, Plaintiff did not properly serve either Arcosa or Containers. Nevertheless, for the sake of judicial economy, Containers submits this Notice of Removal.

Containers is timely filing this Notice of Removal within 30 days, as required by 28 U.S.C. § 1446(b).

## **II. VENUE**

The District Court in and for Tulsa County, State of Oklahoma is located within the Northern District of Oklahoma. Therefore, venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

## **III. BASIS FOR REMOVAL: DIVERSITY JURISDICTION**

This action is properly removable under 28 U.S.C. § 1441(a), because the United States District Court has original jurisdiction in this case pursuant to 28 U.S.C. § 1332(a), which provides, “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between...citizens of different States....”

### **A. The Amount in Controversy Exceeds \$75,000**

This is an action to recover damages for wrongful termination in violation of Oklahoma public policy. Plaintiff seeks damages “in an amount in excess of \$75,000.” [Petition, Prayer] Accordingly, the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

### **B. Complete Diversity of Citizenship Exists between Plaintiff and the Proper Defendant.**

Plaintiff is a citizen of the State of Oklahoma. [Petition, ¶1]. Containers is a limited liability corporation organized under the laws of the state of Delaware, and has its principal place of business in Dallas, Texas. It is wholly owned by Arcosa, Inc., which is organized under the laws of the state of Delaware, and has its principal place of business in Dallas, Texas. [Declaration

of Yuki Whitmire (“Whitmire Decl.”), ¶¶3-4, Ex. “2”]. Therefore, Containers is a citizen of Delaware and Texas within the meaning of 28 U.S.C. § 1332.

#### **IV. CONSENT OF ALL DEFENDANTS**

Containers files this removal and Trinity Industries, Inc. consents to the removal.

#### **V. CONCLUSION**

In accordance with 28 U.S.C. § 1446, copies of this Notice of Removal will be promptly served upon counsel for all adverse parties and filed with the Clerk of the District Court in and for Tulsa County, State of Oklahoma.

WHEREFORE, Defendant Containers respectfully requests that this Court take jurisdiction of this action and issue all necessary orders and process to remove it from the District Court in and for Tulsa County, State of Oklahoma to the United States District Court for the Northern District of Oklahoma.

Respectfully submitted,

/s/ Stephanie Johnson Manning

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**ATTORNEYS FOR  
ARCOSA TANK, LLC f/k/a TRINITY  
CONTAINERS, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 19, 2019, I filed the foregoing with the Clerk of the Court using the ECF filing system, which will send notification of such filing to the following:

Benjamin J. Oxford  
Hans Otto Lehr

s/ Stephanie Johnson Manning  
Stephanie Johnson Manning

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